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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,016	12/13/2001	Timothy Frederick Thomas	LL-111-R &D	2794

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EXAMINER

PICKETT, JOHN G

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 12/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/022,016

Applicant(s)

THOMAS ET AL.

Examiner

Gregory Pickett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action acknowledges the applicant's Amendment A, presented as Paper No. 9. Claims 1-38 are pending in the application.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Specification

3. In light of the applicant's amendment, the objection to the specification is hereby withdrawn.

Claim Rejections - 35 USC § 103

4. Claims 1, 3, 4, 6, 10, 13, and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Focke et al (US 5,513,748) in view of Bray et al (US 6,164,444).

Regarding claim 1, Focke et al discloses a package for articles (Figure 1) with a container body (12, 13) comprising body panels (16-23) and a separation member (34, 35) dividing the container into first and second compartments, each compartment having an opening defined by an edge (as shown, Figure 1), and first (14) and second (15) lids.

Focke et al does not disclose a first and second sealing layers removably affixed to the edges for sealing the container body.

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Bray et al discloses a sealing layer (7) removably affixed to the edges for sealing the container body. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the package of Focke et al with a sealing layer over each opening as taught by Bray et al in order to ensure the freshness of the contents.

As to claims 3 and 4, the package of Focke-Bray discloses a sealing layer of low permeability sheet material adhesively affixed to the first and second edges of the container (for example, Bray, Col. 1, ll. 64-67, and Abstract).

As to claim 6, the package of Focke-Bray is shaped as claimed by the applicant (Focke et al, Figure 1).

As to claim 10, the package of Focke-Bray discloses lids attached by hinges (Focke et al, 50, 51).

As to claim 12, the package of Focke-Bray discloses lids attached by hinges on opposite sides of the container body and having a parallel axis (Focke et al, Figure 2).

As to claim 13, the package of Focke-Bray discloses lids and bodies having peripheral flanges and peripheral shoulders providing a smooth junction between the lids and the container body when closed (Focke et al, Figure 2).

As to claims 19 and 20, the package of Focke-Bray discloses a tab (Bray, 10).

As to claim 21, the package of Focke-Bray does not expressly disclose an internal space at less than atmospheric pressure. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the package with internal spaces at a pressure less than atmospheric since it was known in the art that

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sealing a container at less than atmospheric pressure extends the shelf life of the product.

5. Claims 2, 22-24, 26, 27, 30, 33, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Focke et al (US 5,513,748) in view of Bray et al (US 6,164,444) and Clemens (US 3,007,623).

Regarding claim 2, the package of Focke-Bray, as applied to claim 1 above, discloses the claimed invention except for the dual brands of cigarettes.

Clemens discloses a package (78) with dual brands of cigarettes. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the package of Focke et al with dual brands of cigarettes as taught by Clemens in order to offer the package to smokers who prefer to alter the types of cigarettes smoked.

Regarding claim 22, Focke et al discloses a container (Figure 1) with a generally rectangular body having an internal space for containing cigarettes and a front, back, two side panels (16-23), a separation member (34, 35) dividing the container into two compartments with a perimetrical edge defining openings (as shown, Figure 1); a plurality of cigarettes (69); and a first (14) and second (15) lid attached on opposite panels (Figure 1). Focke et al does not disclose dual brands of cigarettes.

Clemens discloses a package (78) with dual brands of cigarettes. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the package of Focke et al with dual brands of cigarettes as taught by Clemens

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in order to offer the package to smokers who prefer to alter the types of cigarettes smoked.

Focke-Clemens does not disclose a first and second sealing layers removably affixed to the edges for sealing the container body.

Bray et al discloses a sealing layer (7) removably affixed to the edges for sealing the container body. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the package of Focke-Clemens with a sealing layer over each opening as taught by Bray et al in order to ensure the freshness of the contents.

Regarding claim 23, the container of Focke-Clemens-Bray is made of a material having a low permeability (Clemens, Col 1, ll. 64-72).

As to claim 24, the container of Focke-Clemens-Bray does not expressly disclose an internal space at less than atmospheric pressure. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container with internal spaces at a pressure less than atmospheric since it was known in the art that sealing a container at less than atmospheric pressure extends the shelf life of the product.

As to claims 26 and 27, the container of Focke-Clemens-Bray discloses the claimed invention except for the polymeric material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the provide the container of Focke-Clemens-Bray with the claimed polymeric material, since it has been held to be within the general skill of a worker in the art to select a known material on the

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basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

As to claim 30, the container of Focke-Clemens-Bray discloses lids and bodies having peripheral flanges and peripheral shoulders providing a smooth junction between the lids and the container body when closed (Clemens, Figures 5-6; Focke et al Figure 1).

As to claims 33 and 34, the container of Focke-Clemens-Bray discloses the claimed invention except for the metallic material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container of Focke-Clemens-Bray with the claimed metallic material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

6. Claims 25, and 35-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Focke-Clemens-Bray as applied to claim 22 above, and further in view of Keaveney et al (US 5,938,018).

Regarding claim 25, the container of Focke-Clemens-Bray as applied to claim 22 discloses the claimed invention except for a flexible sheet hinge.

Keaveney et al discloses a cigarette container (10) with a flexible sheet hinge (18). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container of Focke-Clemens-Bray with a hinge of

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flexible sheet material as taught by Keaveney et al in order to allow for the removal of the lid. It has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

As to claim 35, the container of Focke-Clemens-Bray-Keaveney as applied to claim 25 above meets the claimed method by presentation.

As to claim 36, the container of Focke-Clemens-Bray-Keaveney does not expressly disclose an internal space at less than atmospheric pressure. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container with internal spaces at a pressure less than atmospheric since it was known in the art that sealing a container at less than atmospheric pressure extends the shelf life of the product.

As to claim 37, the container of Focke-Clemens-Bray-Keaveney does not expressly disclose insertion and affixing steps performed substantially simultaneously. It would have been obvious to one of ordinary skill in the art at the time the invention was made to perform the claimed steps simultaneously in order to reduce the steps required for fabrication. Performing similar fabrication steps simultaneously is rudimentary in nature and requires only routine skill in the art.

As to claim 38, the container of Focke-Clemens-Bray-Keaveney discloses the claimed cigarette brand arrangement (Clemens, Col. 1, ll. 9-20).

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7. Claims 1-7, 10, 12, 14, 15, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore (US 2,185,604) in view of Focke et al, Clemens, and Allen et al (US 4,026,063).

Regarding claim 1, Moore discloses a package for articles with a container body (15) having body panels and a separation member (34) dividing the internal space into first and second compartments, sealing layer (35) and first lid (43). More teaches an elongated container. Moore does not disclose a second sealing layer and a second lid.

Clemens teaches that it is desirable to have a container with multiple brands of articles.

Allen et al teaches a dual elongated container with compartments on the top and bottom and dual lids.

Focke et al teaches lids that are diametrically opposed.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the container of Moore with multiple compartments and lids as taught by Allen et al, Clemens, and Focke et al for the purpose of packaging multiple brands of articles.

As to claim 2, the package of Moore-Focke-Clemens-Allen discloses cigarettes as the contents with the separate compartments containing separate brands (Clemens, Col. 1, ll. 9-20).

As to claims 3 and 4, the package of Moore-Focke-Clemens-Allen discloses a sealing layer of low permeability sheet material adhesively affixed to the first and second edges of the container (for example, Bray, Col. 1, ll. 64-67, and Abstract).

As to claim 5, the package of Moore-Focke-Clemens-Allen discloses separation members (Moore, 34 and Allen, Figures 1 and 2).

As claim 6, the package of Moore-Focke-Clemens-Allen is shaped as claimed by the applicant (Moore, Figure 1).

As to claim 7, the package of Moore-Focke-Clemens-Allen discloses the claimed invention except for the integrally molded polymeric material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the provide the container of Moore-Focke-Clemens-Allen with the claimed polymeric material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. It would have further been obvious to one of ordinary skill in the art at the time the invention was made to integrally mold the container since it has been held that forming in one piece that which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

As to claim 10, the package of Moore-Focke-Clemens-Allen discloses hinged lids (Moore, Figure 3).

As to claim 12, the package of Moore-Focke-Clemens-Allen discloses the claimed lid arrangement (Focke et al Figure 1).

As to claim 14, the package of Moore-Focke-Clemens-Allen discloses the claimed invention except for the material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the provide the container of

Moore-Clemens-Allen-Cryder with the claimed material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

As to claim 15, the package of Moore-Focke-Clemens-Allen as applied to claim 7 discloses except for the specific material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container of Moore-Focke-Clemens-Allen with the claimed material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

As to claims 19 and 20, the package of Moore-Focke-Clemens-Allen discloses a tab (Moore, 36).

8. Claims 8, 9, 17, 18, 22, 28, 29, 31, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore-Focke-Clemens-Allen as applied to claims 1 above, and further in view of Dula (US 1,253,219).

Regarding claim 8, the package of Moore-Focke-Clemens-Allen as applied to claim 1 above discloses the claimed invention except for the bottom protrusions.

Dula discloses a package for articles with bottom protrusions (12a) for preventing the articles from moving during transport. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the package of Moore-

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Focke-Clemens-Allen with protrusions as taught by Dula in order to prevent the articles from moving during transport.

As to claim 9, the package of Moore-Focke-Clemens-Allen-Dula as applied to claim 8 discloses semi-circular troughs.

As to claim 17, the package of Moore-Focke-Clemens-Allen-Dula discloses the claimed arrangement.

As to claim 18, the package of Moore-Focke-Clemens-Allen-Dula discloses a perforated line (Moore, 37).

As to claims 22, 28, 29, 31 and 32, the package of Moore-Focke-Clemens-Allen-Dula as applied to claim 8 above discloses the claimed arrangement.

9. Claims 11, 13, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore-Focke-Clemens-Allen as applied to claim 10 above, and further in view of Keaveney et al.

Regarding claim 11, the package of Moore-Focke-Clemens-Allen discloses the claimed invention except for the flexible sheet hinge.

Keaveney et al discloses a cigarette container (10) with a flexible sheet hinge (18). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container of Moore-Focke-Clemens-Allen with a hinge of flexible sheet material as taught by Keaveney et al in order to allow for the removal of the lid. It has been held that constructing a formerly integral structure in

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various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

As to claim 13, the package of Moore-Focke-Clemens-Allen discloses the claimed invention except for the peripheral shoulders and flanges.

Keaveney et al discloses a cigarette container (10) with peripheral shoulders and flanges (as shown, Figure 5a). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the package of Moore-Focke-Clemens-Allen with a shoulder and flange arrangement as taught by Keaveney et al in order to form a smooth outer surface.

As to claim 16, the package of Moore-Focke-Clemens-Allen-Keaveney discloses cut-outs (Allen, Figure 1).

Response to Arguments

10. Applicant's arguments with respect to claims 1-38 have been considered but are moot in view of the new ground(s) of rejection. Applicant's arguments are directed to the diametrically opposed hinges presented in the amendment. Focke et al teaches this arrangement. The applicant, in the IDS submitted March 13, 2002, provided this reference to the examiner.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 703-305-8321. The examiner can normally be reached on Mon-Fri, 8:00 AM to 4:30 PM.

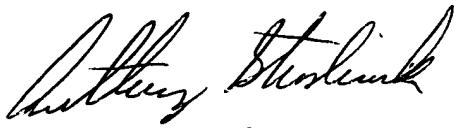
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

GAP

Gregory Pickett
Examiner
December 23, 2003



ANTHONY D. STASHICK
PRIMARY EXAMINER